

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**PLANNED PARENTHOOD OF THE
HEARTLAND, INC. and JILL
MEADOWS, M.D.,**

Petitioners,

v.

**TERRY E. BRANSTAD ex rel. STATE OF
IOWA and IOWA BOARD OF
MEDICINE,**

Respondents.

Case No. EQCE081503

**RULING ON PLAINTIFFS' PETITION
FOR TEMPORARY INJUNCTION**

Plaintiff Planned Parenthood of the Heartland, Inc. and Jill Meadows, M.D. (collectively referred to as PPH) filed a petition for declaratory judgment and injunctive relief on May 3, 2017. The petition claims that section one of Iowa Senate File 471 (2017) violates the due process and equal protection clauses of the Iowa Constitution. Section one requires a physician performing an abortion to obtain a written certification from the patient at least seventy-two hours prior to performing an abortion. The certification requires that the patient has had an ultrasound, was given an opportunity to see the ultrasound, was given the opportunity to hear a description of the unborn child and hearing the heartbeat, and was provided information from the Iowa Department of Public Health.

Also on May 3, 2017, at 12:23 p.m., PPH filed a motion for temporary injunction. Senate File 471 has not been signed into law, but the governor has scheduled a bill signing for 8:30 a.m. on May 5, 2017. Section six of the bill states that the bill will go into effect immediately upon the governor signing. PPH seeks to temporarily enjoin the implementation of the statute pending resolution of the case. PPH provided affidavits in support of its claim. The court will not

summarize the affidavits in this written ruling due to the time-sensitive nature of this motion, but some of the facts were discussed in the verbal ruling made of record at the hearing.

CONCLUSIONS OF LAW

Injunctions invoke the courts' equitable powers, so the courts must apply equitable principles. *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001). These equitable principles are laid out in the case law and in Iowa R. Civ. P. 1.1502. As applicable to this case, the court may issue an injunction if plaintiff is entitled to relief which includes "restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff." Iowa R. Civ. P. 1.1502(1). The court must consider two other factors. The court must "balance the harm that a temporary injunction may prevent against the harm that may result from its issuance." *Max 100*, 621 N.W.2d at 181. Additionally, as applicable to a temporary injunction, plaintiff must show a likelihood of success on the merits. *Id.*

The Iowa Supreme Court has "repeatedly emphasized that the issuance or refusal of a temporary injunction is a delicate matter—an exercise of judicial power which requires great caution, deliberation, and sound discretion." *Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 96 (Iowa 1985). The party requesting the temporary injunction has the burden of proving a factual basis for its issuance. *Id.* at 95.

For reasons stated on the record at hearing, the court cannot find that plaintiff has shown that a temporary injunction is necessary to prevent irreparable harm on the plaintiff. Additionally, any harm caused to plaintiffs is balanced by the public interest aspects of the statute. The court also finds that plaintiff has not shown a likelihood of success on the merits of its claim, although it has legal support for its claim.

The Iowa Supreme Court has only decided one constitutional challenge to a restriction on abortion. *See Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 262–63 (Iowa 2015) (*PPH I*). The supreme court decided that case by applying the undue burden test that the United States Supreme Court has adopted for constitutional challenges under the United States Constitution. *See id.* at 254 (citing *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 878–79, (1992)). While the court reserved the question whether a stricter test might be available under the Iowa Constitution, it did not apply a standard beyond the undue burden test that has been used by the federal courts for twenty-five years. Accordingly, the court will apply the undue burden test as the constitutional standard.

An undue burden exists, and therefore a provision of law regulating abortion is unconstitutional, “if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” *Casey*, 505 U.S. at 878-79. The court recognized that, “[a]s with any medical procedure, the State may enact regulations to further the health or safety of a woman seeking an abortion.” *Id.* However, “[u]nnecessary health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion” may amount to an undue burden. *Id.*

Notably, *Casey* itself considered the undue burden caused by a twenty-four hour waiting period. 505 U.S. 833, 885–86. The United States Supreme Court considered many of the same arguments made by PPH here, including the burdens caused by additional travel, need to take time off, the difficulty explaining whereabouts to family, employers, and others, hardship to lower income women, and being subject to harassment from protesters. *Id.* The court accepted that the waiting period may impose some burden, but did not find it presented an undue burden. The Iowa Supreme Court appeared to at least implicitly accept this finding in *PPH I*, and in fact

quoted the findings in *Casey* that the “the informed consent requirement served a ‘substantial government interest,’ including the ‘psychological well-being’ of the woman. 865 N.W.2d at 269. And while PPH has cited cases rejecting statutory waiting periods, other courts have found them to be constitutional. *See e.g. Reprod. Health Servs. of Planned Parenthood of St. Louis Region, Inc. v. Nixon*, 185 S.W.3d 685 (Mo. 2006) (twenty-four hour waiting period).

In light of the holding in *Casey* as to a similar waiting period law, the court cannot find that PPH can demonstrate a likelihood of success on the merits. It may be that PPH may ultimately prove its case at trial, but the court cannot find a likelihood of success based on the circumscribed review of the case on this temporary injunction stage.

RULING

Plaintiff’s motion for temporary injunction is denied. Because the act has not yet been signed by the governor, this ruling shall become effective immediately upon the governor signing the bill. If the governor does not sign the bill, this ruling will be moot and have no effect.



State of Iowa Courts

Case Number
EQCE081503

Case Title
PLANNED PARENTHOOD OF THE HEARTLAND V TERRY
BRANSTAD ET AL
Type: OTHER ORDER

So Ordered

A handwritten signature in black ink, reading "Jeffrey Farrell". The signature is written in a cursive style with a large, sweeping "J" and "F".

Jeffrey Farrell, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2017-05-04 16:02:25